

I. INTRODUCTION

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A. WHAT IS WATER RIGHTS ADJUDICATION

When a judge hears a case and renders a decision, the matter is said to have been adjudicated. In the arena of water rights, adjudication refers specifically to the settling of claims filed for water rights.

Before passage of the Montana Water Use Act in 1973, a person could gain a right to use water simply by putting that water to beneficial use. These rights are known as existing water rights. But no one knew how many existing water rights there were or exactly how much water had been appropriated. The Water Use Act, effective July 1, 1973, established a central repository for water right records and required prospective water users to apply for a permit before putting water to use. The act also recognized that the amounts, ownership, and priority dates for all existing water rights needed to be better defined. In 1979, the legislature modified the act by passing Senate Bill 76, which set up Montana's current system for adjudicating existing water rights.

Senate Bill 76 divided Montana into four water divisions and called for four judges, commonly known as the Water Court, to adjudicate all existing water rights in a statewide proceeding. At the same time, the Reserved Water Rights Compact Commission was created to negotiate compacts with federal agencies and Indian tribes wishing to quantify their federal reserved water rights in Montana. The activities of the commission are an integral part of the statewide adjudication process.

On June 6, 1979, the Montana Supreme Court issued an Order requiring every person claiming ownership of an existing water right to file a claim with the Department of Natural Resources and Conservation (department) no later than January 1, 1982. On December 7, 1981, the Supreme Court extended the deadline to April 30, 1982, at 5:00 p.m. Stockwater and domestic claims for groundwater or instream flow were exempted from this process, though such claims could be filed voluntarily.

By statute, claims not filed by the April 30, 1982 deadline are presumed to have been abandoned. In 1992, the Montana Supreme Court determined that the failure to file a statement of claim on or before April 30, 1982, resulted in the forfeiture of the water right. In 1993, the Fifty-Third Montana Legislature passed Senate Bill 310 providing for, under certain terms and conditions, the remission of the forfeiture of existing rights to the use of water caused by the failure of persons to file claims on or before April 30, 1982. Accordingly, a claim not filed with the department on or before April 30, 1982 (a late claim), may be filed by physically filing the claim with the department on or before July 1, 1996, or sending the claim by United States mail, postmarked on or before July 1, 1996.

Over 200,000 claims were received by the April 30, 1982 deadline. To date, over 3,300 late claims have been filed. Since all of these claims cannot be adjudicated at once, the claims are being handled systematically for each of Montana's 85 river basins. Each claim is examined by the department staff for completeness and accuracy, and apparent discrepancies are reported to the claimants and the Water Court. The reports are also made available to the public. When all the claims in a basin are verified, a decree is issued.

The first issuance of a decree by the Water Court is termed either a temporary preliminary decree or a preliminary decree. Temporary preliminary decrees are issued in basins containing federal reserved water rights where a compact has not been concluded. Such decrees contain all rights other than reserved rights being negotiated. In these basins, a preliminary decree will be issued as a second step in the process and will include all rights in the temporary preliminary decree along with all reserved rights in the basin. Adjudication in basins without federal reserved rights begins with a preliminary decree.

Notice of issuance of every decree is given to all parties that may be affected by it, along with notice of the time period for objecting to the rights or compacts in the decree. The water judge, with the help of a water master, hears and decides all objections. After all objections have been resolved, the water judge issues a final decree. On the basis of the final decree, the department will issue a Certificate of Water Right to each person decreed an existing water right. Water rights dated after July 1, 1973, are not subject to the adjudication process.

B. PROGRAM DESCRIPTION

The Adjudication Program involving the department and the Montana Water Court is responsible for the protection and confirmation of all rights to the use of water for any useful and beneficial purpose that existed prior to July 1, 1973, the effective date of the Montana Water Use Act.

1. Program Responsibilities. Generally the department's role in the program is to collect, compile, record, and examine claims for pre-1973 water rights filed pursuant to Senate Bill 76 and thereby assist the water courts in preparing preliminary and final decrees. More specifically, the department's responsibilities are:

- (i) Provide information and assistance to aid claimants in filing claims in accordance with 85-2-112(6), MCA. Even though the general filing deadline is past, late claims and amendments to filed claims are still received.
- (ii) Maintain the centralized record system of all existing water right claims as required by Article IX Section 3 of the Montana Constitution.
- (iii) Provide assistance and information to the water judges as required by 85-2-243, MCA. Meeting this objective involves the following areas:
 - Continue to examine water right claims in specified basins and provide a summary report upon completion to the court.
 - Respond to requests made by the water courts or the department's legal staff in conjunction with the litigation of objections to water court decrees.
- (iv) Review decrees issued by the Montana water courts, and submit either a list of potential problems pursuant to 85-2-243, MCA or objections to protect Montana's interests as allowed by 85-2-233, MCA.
- (v) Pursuant to 85-2-236, MCA, issue a certificate of water right to each person decreed an existing right in those basins where a final decree has been entered. Provide the county clerk and recorder quarterly and annual summary reports of all certificates issued by the department within the county.
(Note: No certificates have been issued to date for the six final decree basins because of

reserved rights issues in two basins and the potential reopening of all final decrees.)

- (vi) Improve the department's public relations image through positive contact with claimants during claims examination.

2. Program Goals. To provide the statewide adjudication with thorough and timely review of existing water rights claims for completeness, accuracy, and reasonableness. To check that the elements of a water right, individually and in combination, are reasonable and accurate using the policies and procedures specified in the examination manual. To identify for further review through the decree process those aspects of a water right that do not appear reasonable or accurate.

3. Policy And Procedures. The policy and procedures to implement the program goals are based on rules adopted by the Montana Supreme Court on July 15, 1987. These rules provide the general guidelines on how to examine claims.

To implement the general guidelines to examine claims as specified in the Supreme Court Rules, the department has written a more detailed manual entitled the "Water Right Claim Examination Manual."

The manual provides step-by-step procedures for department adjudication staff to follow in implementing the Supreme Court Rules on a day-to-day basis. The manual explains how to routinely apply those guidelines to specific claims and issues in a manner consistent with the state's computer data base. The manual also describes how the department claims examination is to be coordinated between the regional offices, the program manager, the records section, the water courts, and the claimants.

The Claim Examination Manual covers daily technical guidance to the adjudication staff for examining each element as prescribed by the Supreme Court Rules. By addressing the details of day-to-day claim examination, this manual serves the objective of consistent treatment of claims by different staff members and between different regional offices.

4. Claims Examination Overview. In general, the review of water right claims by the department consists of the following activities.

- Review the claim file to see if the claimed information is clear and understandable. If discrepancies exist in the claimed information, the claimant is usually contacted. The claim should clearly and accurately reflect the claimant's intent.
- Examine the claim against the available factual records and resources, i.e., maps, aerial photographs, courthouse

records, etc. In many cases, factual records and resources may be limited, in which case the claimed information is reviewed for reasonableness. Additional information may be requested from the claimant.

- If the examination raises issues and questions regarding the claimed information, the claimant is normally contacted. The result of this contact may or may not resolve the issues. In certain cases a field investigation may be conducted. Unresolved issues are reported in the department's examination report.
- The examination worksheet and supplement forms are microfilmed and used to update the computer data base. From the data base, a copy of the department's summary report is printed for the water court's review.

When examining claims, department personnel must abide by the following principles.

- The claimant may claim or adjust their claim as they wish. The final authority for determining the validity of changes is the water court's.
- Department claim examination personnel are not to draw legal conclusions or give legal advice.
- The department may explain the claim examination procedures and the adjudication process, and offer reasonable assistance with forms and paperwork to claimants.
- The department has a responsibility by statute to keep accurate records (including documenting claimant contacts, etc.) and to report facts and issues discovered during claim examination.

5. Decree Issuance. Following review of claims by the department, a Summary Report, which consists of Part A: Abstract of Water Right Claim, and Part B: Examination Report, is printed and reviewed by the water court prior to decree issuance.

The water court review of any basin is completed in Bozeman, and changes directed by the water court to the Summary Report are made by the department in Helena prior to the court's formal issuance of a decree. As directed by the water court, the department prints, prepares, and mails the decree from Helena. Included in the mailing process is an individual notice (commonly referred to as the Notice of Availability) to each owner of a claim, certificate and permit applicants, water reservation grantees, and other interested persons who requested notice.

The first issuance of a decree for a particular basin by the water court is termed either a temporary preliminary decree or a

preliminary decree. Temporary preliminary decrees are issued by the water court in those basins containing federal or Indian reserved water rights. These rights are subject to compact negotiation proceedings for the federal government and the several Indian tribes claiming reserved water rights within the state.

Adjudication by the water court beyond a temporary preliminary decree is suspended in basins with reserved water rights while negotiations for a compact are being pursued. Eleven or possibly twelve basins within Montana have no federal or Indian reserved water rights subject to compact negotiations and, therefore, may proceed to preliminary and final decree. Compacts negotiated and ratified to date are:

- Fort Peck-Montana Compact	1985 Legislature
- Northern Cheyenne-Montana Compact	1991 Legislature
- United States Park Service	1993 Legislature

After a temporary preliminary or preliminary decree has been issued, a minimum 180-day review period is provided by statute. The water judge may extend the time limit of the review period up to two additional 90-day periods for good cause shown. An objection to the findings and conclusions stated in the decree may be submitted to the water judge by the department, a person named in the decree, or any other person for good cause shown. The objection entitles the department or the person to a hearing before the water judge to resolve the objection.

Most objections are resolved prior to a hearing by status conferences and stipulations. After an objection is resolved through hearings, status conferences, or stipulations, the water court sends updated information to the department for inclusion into the centralized water right data base. Upon order from the water judge, the department prepares the next level decree (preliminary or final) for issuance.

C. COMMENTS FROM THE CHIEF WATER JUDGE

- We are adjudicating the waters of Montana. Water that belongs to all the people of Montana and the beneficial use of water that belongs to the claimants of that water.
- We are adjudicating the waters of Montana that are for the enjoyment and use of the people of Montana now and in the future.
- We must remember always that we are bound by the law, that we are not owners of this water, and that we are not to make "we know best" decisions.
- We will follow an aggressive, common-sense program seeking a balanced perspective.
- There is a job to do and we intend to do it. We will do this job as quickly as possible.
- The job we do will be as factually correct as possible. We will be following the rules that we have from the courts reasonably and sensibly.
- Our adjudication must be correct enough to withstand factual and legal analysis and attack--and this from within or without Montana.
- But with all that, we refuse to slow down on our job for absolute perfection. (That type of perfection is saved for Heaven and the Heavenly Hosts!)
- We know our job is adjudication, that is, identification, and not allocation and definitely not elimination.
- A copy of these methods, procedures, and testing shall be furnished to each person working on our adjudication program in the field offices, engineers, water masters and each judge.
- We insist they be followed. They are the result of months of study, revising, testing in actual drainages. Such unified methods and procedures followed by us all will result in a finished job, a job which we will all take pride in--more important, a job that will stand.

W.W. Lessley
Chief Water Judge
Montana Water Court

D. HISTORY OF THE ADJUDICATION PROGRAM

1. Legislative History. Article IX, Section 3(1) of the Montana Constitution (adopted in 1972) states "All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed." In response to this mandate, a water rights adjudication program was created by the 1973 Legislature under the Water Use Act (Senate Bill 444) to judicially and finally determine Montana's pre-1973 water rights.

The Department of Natural Resources and Conservation (department) had the responsibility of beginning proceedings to determine existing rights under the Water Use Act. Guided by the statutes at that time, the department organized the adjudication program and selected two Powder River basins to begin gathering data essential to the proper understanding and determination of existing rights. Approximately 10,000 existing water rights were examined by the department during a five year period in preparation for the two preliminary decrees.

The 1979 Legislature significantly amended the adjudication process with the passage of Senate Bill 76. In this legislation, a system of water judges (commonly referred to as the water court) with the responsibility to adjudicate water rights was established. The water court consists of four judges (one for each of the major water divisions in the state, i.e., Clark Fork, Yellowstone, Upper and Lower Missouri) plus a staff of water masters and clerical personnel. The chief water judge, who serves the Upper Missouri division, and all water court staff are located in Bozeman.

SB76 redefined the department's role from the former adjudication process (commonly referred to as the Powder River adjudication). The department was now statutorily mandated to provide information assistance to the water judges. In the former role, the department, as directed by the local district court, was to independently prepare draft preliminary decrees for the district court. Title 85, Chapter 2, Part 2 of the Montana Code Annotated contains the statutes to be followed in Montana's present adjudication process.

The Bill also created the Reserved Water Rights Compact Commission. This Commission was given the authority to negotiate and quantify federal reserved water rights with those entities, primarily federal agencies and Native Americans residing on reservations, having these unique rights. Results of the compacts upon ratification by Congress and the Legislature are to be included in the water court decree, issued under the statewide adjudication effort.

There are several notable court actions, all interrelated to some degree, which have had significant impacts on the adjudication. Beginning on January 30, 1975 the United States and Indian tribes filed seven cases over a four year period in United States District Court. Apparently these were filed in response to the department

beginning adjudication activities on the Tongue and Big Horn Rivers (under the Montana Water Use Act) and later in initiating statewide adjudication efforts (under Senate Bill 76). On November 26, 1979, the Federal District Court dismissed all seven cases in favor of ongoing statewide water right adjudication proceedings. The United States and the Indian tribes appealed the cases to the U.S. Circuit Court of Appeals.

The Ninth Circuit Court of Appeals consolidated the appeals for review and in Northern Cheyenne Tribe vs. Adsit ("Adsit") reversed the District Court. Then the State of Montana appealed the Circuit Court decision to the U.S. Supreme Court. On October 4, 1982 the United States Supreme Court granted Montana's petition and consolidated it with San Carlos Apache Tribe vs. Arizona. The Supreme Court, in July 1983, upheld the District Court's dismissal and stated that they were correct in deferring to the state proceedings.

2. Claim Filing And Recordation. Based on petitions from the Montana Attorney General, the Montana Supreme Court ordered that statements of claim for all existing water rights must be filed with the department by 5:00 p.m. on April 30, 1982. By statute, failure to file a claim as required resulted in a conclusive presumption that the water right had been abandoned.

Statement of Claim forms first became available November 15, 1979. These forms were made available at ten department offices statewide, at every County Clerk and Recorder and Clerk of Court office and in many County Extension, Soil Conservation Service (SCS) or Agricultural Stabilization and Conservation Service (ASCS) offices around the state. In addition to the forms the department made water use guidesheets, instructional brochures, and general informational brochures available.

To get the program off the ground the department, with assistance from the four water judges, conducted 19 public meetings in January and February of 1980. A total of 7,046 people attended these meetings and received specific information on the adjudication process. In addition to these public meetings and as required by statute several legal steps were taken to provide the people of Montana, especially property owners, with proper notice of the adjudication proceedings. The Water Rights Order issued by the Montana Supreme Court was printed in the 8 daily newspapers in the state and in at least 1 paper published in each county. The Order was published in a total of 59 papers within 30 days of its issuance and again during April of 1980, 1981, and 1982. To serve individual notice, the Water Rights Order and explanation were enclosed with every County Treasurer's statement of property tax in October 1979, 1980, and 1981. A copy of the Order was conspicuously posted in county courthouses within 30 days after issuance and again in 1980, 1981, and 1982.

The most successful public information and assistance efforts were the workshops conducted by the department on a regular

statewide basis throughout the filing period. From January to March of 1982, 238 assistance workshops were conducted in 50 different cities. Workshops were given to many special groups including the Montana Realtors Association, County Agricultural Extension Agents, Municipalities, County Clerk and Recorders, County Clerks of Court, and agricultural organizations such as Montana Stockgrowers Association. The department conducted two seminars for the State Bar of Montana in April 1980 and participated in a third in October 1981.

Extensive use was made of all media. Public service announcements for radio and television were produced and received wide coverage. A 30-minute film entitled "Crisis at our Headgate" received wide coverage in 1981 and early 1982. Weekly public service announcements providing workshop schedules were provided to all interested radio stations and newspapers in the state. Press releases were also sent out on a regular basis. Many, like the Stone/Dunbar/Eagle series, were major feature articles. These announcements were given good media coverage. Adjudication personnel participated in news programs and contacted media sources in their area to initiate coverage and special interest articles on the adjudication program. Direct mailings through the use of bulk mailing permits were used to announce meetings and deadlines in the fall of 1981 and early spring of 1982. Paid advertising was used moderately throughout the program. However, a fairly intensive advertising effort was made in December 1981 and March 1982.

On April 30, 1982 at 5:00 p.m. the deadline for filing Statements of Claim for existing pre-July 1, 1973 water rights passed. The department received 201,165 claims. See Figure I-1 for a statewide breakdown by type of use.

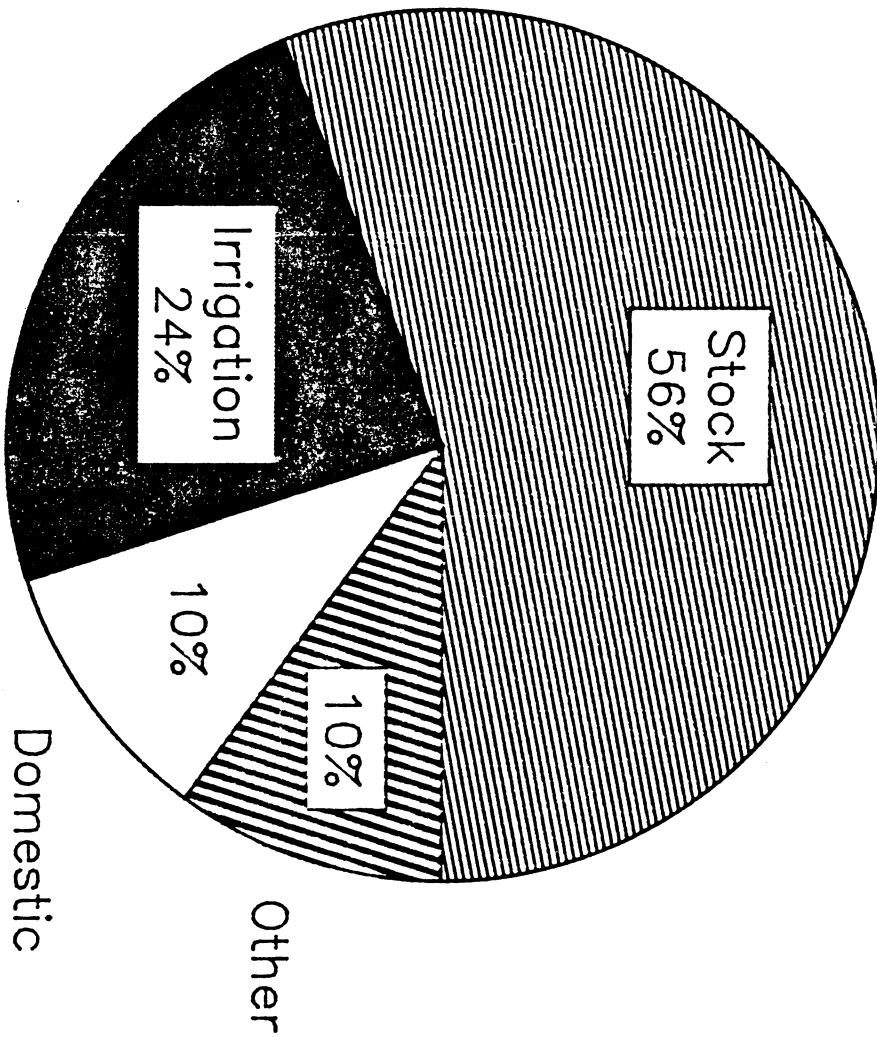
Approximately 56% of the claims were filed between January 1 and April 30. Approximately 45% claims were filed in the month of April and 60,000 claims or 30% were filed in the last week of the filing period. About 2,000 claims were received after April 30 that were postmarked April 30. To collect these filings, the department had a total of 57 people working in the adjudication program by April 30, 1982.

The department had to process and enter into a centralized record system all Statements of Claim received. To do this the department went through a claim check process called "clarification". This process was approved by the water court and implemented in April 1981. It was a process in which staff reviewed the claim with its attachments to make sure it was complete, clear, and interpretable. If problems were discovered, the claimant was contacted. Our goal was to have all claims reviewed, filmed, computerized, and filed in archives by July 11, 1983. Filming was completed in May 1983. Computerizing and filing in archives were completed in June 1983.

Approximately 3,500 water right claims have been filed with the department since the 5:00 p.m. April 30, 1982 Supreme Court

FIGURE I-1

Adjudication Claims Statewide Breakdown By Use



deadline. In addition, 10,302 existing water uses were declared in the two Powder River basins prior to the current claims filing process. As a result, a total of over 216,000 filings for existing water uses are on record with the department for the 85 drainage basins that make up Montana's hydrologic configuration. The number of claims in a basin ranges from 99 to 12,864.

3. Claim Review. Senate Bill 76 process, as encoded in 85-2-243, MCA, requires the department to provide assistance and information as may be required by the water judge. Under this statute the department provides pertinent information and facts to the water courts at the direction of the water judge. The department reviews all claims prior to issuance of a decree as the fulfillment of this requirement.

The department began reviewing claims in the fall of 1982 using a water court approved operations manual, referred to as the Verification Manual. The department "verified" over 80,000 claims. Verification included gathering, examining, and reporting data, facts, and issues pertaining to the claims of existing water rights. Typically, each of nine regional offices verified all claims within an assigned, local basin before proceeding to another basin. The verification methodology and scheduling of basins for department review varied, but was approved by the water judges.

Most of the claims "verified" by the department have been decreed by the water courts in 28 temporary preliminary decrees, 7 preliminary decrees, and 4 final decrees.

4. Stipulation. During the summer and fall of 1985, the Montana Department of Fish, Wildlife and Parks, the United States, and other parties filed original proceedings with the Montana Supreme Court urging the court to take supervisory control of the water rights adjudication process. It was argued that the verification procedures developed by the water court and used by the department to examine claims were seriously flawed. The parties claimed that inequitable treatment and inadequate examination of claims would result in inaccurate decrees, and possibly nullify Montana's adjudication process.

Negotiations were held by the various parties which led to an out-of-court stipulation. The department, although not a party, participated in these discussions. The Stipulation was submitted to the Montana Supreme Court on February 19, 1986. Following oral arguments before the Supreme Court to explain its contents and answer questions, the petitioners agreed to dismiss their complaints with the understanding that the Stipulation would be followed.

In regard to the department, the Stipulation states that the examination of water right claims will be limited to "factual analysis and the identification of issues" and that the "water court will refrain from participating in the verification of claims by DNRC, except the water court upon proper application and for good cause shown, may enjoin DNRC from acting beyond its jurisdiction in

the verification process." It was also stated that the examination procedures and policies will be available to the public.

In addition, the Stipulation required, for basins where temporary preliminary or preliminary decrees have been issued, that the department prepare a report for each decreed basin comparing the verification procedures used with the examination procedures adopted pursuant to the Stipulation. The water court agreed, pending the implementation of the procedural revisions described in the Stipulation which included the adoption of new verification procedures, that it would not issue any further decrees.

5. Rules Adoption. Following the stipulation, the department began implementing its provisions, principally the review and modification of the claims review policy and procedures. The objective was to develop a process of gathering data and identifying issues pertinent to water right claims as an independent agency, thereby assisting the water court in accurately adjudicating the underlying rights.

Toward this end, the question arose whether the claim examination procedures should be adopted by the department under the Montana Administrative Procedures Act (MAPA) or adopted by the water court. The department proceeded with the intent of rule adoption under MAPA. Two orders were issued by the water court during July and August, 1986 stating "that the DNRC shall not take any further action to proceed with an informal process of public review and comment...without the...express authorization of the Montana Water Courts." It further ordered "that any future failure to comply with this courts...Order shall be deemed contempt of court."

An appeal of the water court's orders to the Montana Supreme Court was filed by the department on August 20, 1986. Oral arguments were held January 12, 1987. A decision was issued on March 31, 1987 affirming the water court orders prohibiting the department from rule adoption; however, the Supreme Court declared it would promulgate rules covering the verification of water right claims. The Supreme Court's decision went on to say that nothing in the decision "shall be taken to demean or underestimate the crucial role to be played by DNRC in the adjudication of water right claims." It termed the technical expertise, assistance, and information of the department as "indispensable for the success of the adjudication process."

With the assistance of the water court and the department, the Supreme Court issued a temporary version of the claim examination rules - nearly 100 pages - on July 7, 1987. The Supreme Court, without prior public comment, issued the rules with an effective date of July 15, 1987. The Supreme Court stated that public comment on the operation and effectiveness of the rules could be filed with the Supreme Court until March 15, 1988. The intention was to allow a reasonable interval for operating under the rules to determine if they promote a steady progress to final adjudication. Comments were submitted to the Supreme Court by the department, water court,

United States government, Department of Fish, Wildlife and Parks, Montana Power Company, Washington Water and Power, and the Confederated Salish and Kootenai Tribes. To date, the Supreme Court has not acted on the comments submitted.

On July 13, 1989 the Montana Supreme Court issued an order amending the Water Right Claim Examination Rules based on proposed changes submitted to them by the water court and the department on May 8, 1989. In working with the rules since their adoption on July 15, 1987, areas were recognized where the rules were unclear, activities were minimally productive and limits on the department's activities were not adequately defined. The amendments were to increase the efficiency and speed of examining claims, and enhance the precision and clarity with which the rules describe the examination process. The effective date for implementing the amendments was September 1, 1989. On December 18, 1990, the Montana Supreme Court issued a second order amending the Water Right Claim Examination Rules with an effective date of January 15, 1991.

6. Re-examination. The stipulation required the department to file a report with the water court in those basins where a temporary preliminary or preliminary decree had been issued comparing the previous review procedures with those adopted by the Supreme Court. Based on the report, the water court, either on its own motion, at the request of the department or at the request of an individual, could order the department to re-examine all or a portion of the claims in a decreed basin. This requirement of the stipulation affected 34 decreed basins.

In July, 1987 the water court was advised that the department, in accordance with the stipulation, planned to complete the reports for decreed basins comparing the previous verification procedures to the Supreme Court examination procedures. The department further advised the water court that it believes any subsequent claim re-examination in decreed basins should be conducted prior to claim examination in non-decreed basins. Based on several orders issued in August, 1987, the water court ordered the department to cease preparation of comparison reports except for five basins (41G, 40C, 41C, 43A, and 40K) where review of the claims was eventually completed under the verification procedures. The reports were submitted in September, 1987. Re-examination in the five basins was denied.

On January 4, 1988, the United States filed a motion with the water courts to:

- (1) produce reports comparing the previous verification procedures with the present Water Rights Claims Examination Rules in those basins where temporary preliminary or preliminary decrees have been issued; and
- (2) conduct reverification in those basins for which comparison reports have already been issued.

Grounds for the motion included assertions that (1) many of the claims filed to date are inaccurate and excessive (including claims within basins that have received temporary preliminary and preliminary decrees); (2) the reverification of basins that have been inadequately verified under the old claim examination rules is required by both state law and the McCarran amendment; and (3) the February 1986 stipulation requires preparation of comparison reports for the previously decreed basins.

Similar motions were filed by Washington Water Power and Montana Power Company, and a motion to intervene was filed by the Department of Fish, Wildlife and Parks. The water court held a hearing on these motions March 7, 1988 and issued an order and memorandum concerning the motions on May 10, 1988.

The water court's order denied re-examination in the five basins having comparison reports (basins 41G, 41C, 40C, 40K, and 43A), and took under advisement the motion for comparison reports for those basins where temporary preliminary or preliminary decrees have been issued "to allow the court time to specifically examine each of the many basins with thousands of claims," and to then make specific orders.

The court emphasized that the purpose of the adjudication is "to adjudicate all of Montana's pre-1973 water as soon as possible, as simply as possible and to do it accurately and under all the law applicable," and stated that "we are and will continue to give complete study to each basin as it proceeds through adjudication to its final decree."

7. Consultant's Report. Due to the numerous questions raised about the adjudication program, the 1987 legislature reduced the funding for the program by approximately half. The reasoning for the budget cut was to slow down the adjudication process and allow more time for ironing out difficulties. The program work force was reduced from 37.72 to 20 full-time employees. Seven people were laid off, others were repositioned, and vacant positions were eliminated.

The legislature also allocated \$75,000.00 for an independent study of Montana's general stream adjudication to be administered by the legislative Water Policy Committee. A request for proposal for the study was advertised nationally. From a pool of 15 proposals, the law firm of Saunders, Snyder, Ross, and Dickson from Denver was chosen. The consultant's report, submitted on September 30, 1988 to the Water Policy Committee, recommended that Montana's adjudication process only needed some minor legislative fine tuning. The report says Montana's process is not "so grievously flawed as to require massive legislative overhauls".

As a result of the study, four bills were introduced and passed by the 1989 legislature to help reduce potential conflicts and clarify the previous statutes. In addition, funding for the program was increased allowing an increase from 20 to 27 FTEs.

8. Current Status. The program currently has 19 FTEs of which 13 FTEs are located in the regional offices to conduct claim examination. Presently, the department is focusing its claim examination in areas where chronic water shortages and disputes exist. The extent and limits of examination of water right claims is now set by the Water Right Claim Examination Rules adopted by the Montana Supreme Court.

This operations policy manual, the Water Rights Claims Examination Manual, has been written by the department to implement these rules. The detailed operations manual addresses the day-to-day problems, solutions, procedures, and processing steps required in reviewing claims.

9. Decree Status. The following summarizes the number of claims and basins involved in each stage of the decree process as of April, 1995.

Temporary Preliminary Decrees
35 basins + 2 subbasins
81,972 claims

Preliminary Decrees
7 basins
12,612 claims

Final Decrees
6 basins
15,393 claims
Of these, 10,302 water rights were in the two Powder River basins which were examined by the department prior to the formation of the water courts.

Total Decrees
48 basins + 2 subbasins
109,977 claims

Figure I-2 is a basin status map describing the decreed basins and their stage of the decree process.

Figure I-3, an Adjudication Program Chronology, lists the more important events which have occurred in the adjudication program from 1979 to the present.

17



ADJUDICATION PROGRAM CHRONOLOGY

- 5/95

- right claims for accuracy and completeness and the identification of issues.
11. April 8, 1986 Montana Supreme Court rules the ultimate measure of volume for water right claims in Montana is the amount needed for beneficial use and not the limits set in court decrees.
 12. Spring, 1986 DNRC drafted a set of rules for claim examination, DNRC intended to adopt rules under MAPA.
 13. Summer, 1986 Water Court order issued directing DNRC to re-examine the certain groups of claims in the following basins:
 - Basin 43B - MN and PG claims
 - Basin 76G - MN, FW and PG claims
 - Basin 41K - MN, FW, WI, CM and PG claims
 - Basin 41E - MN, FW, WI, CM and PG claims
 - Basin 41H - MN, FW, CM and PG claims
 14. July 23, 1986 Water Court order issued prohibiting DNRC from adopting rules under MAPA.
 15. August 7, 1986 DNRC issued rules informally for public comment.
 16. August 8, 1986 Water Court order issued that DNRC take no further action on rules without express authorization of the Water Court.
 17. August 20, 1986 DNRC appeals orders.
 18. Sept. 26, 1986 Based on a September 25, 1986 Motion by the DNRC, the Water Court orders the re-examination of Basins 76G, 41K, 41E and 41H stopped. The stay was requested on the grounds re-examination procedures had not yet been adopted as agreed to in the Stipulation.
 19. Jan. 12, 1987 Oral arguments before the state Supreme Court.
 - separation of powers
 - due process concerns
 - conflict of interest if Water Court involved in daily DNRC examination activities
 20. Feb. 3, 1987 Joint Appropriations Subcommittee on Natural Resources cuts 500,000 per year from adjudication program budget.
 21. March 31, 1987 Decision issued.

Affirmed the Water Court's orders.
Declared that Supreme Court would
promulgate rules to cover claim
examination. Directed Water Court and
DNRC to submit draft.

22. April 30, 1987 Draft rules submitted to Supreme Court.
23. July 1, 1987 Effective date of reduced adjudication
program budget. Staff reduced from 37.72 FTE
to 20 FTE for FY88 and FY89 (13 FTE in
regional offices).
24. July 7, 1987 Supreme Court issues examination rules.
Effective date of July 15, 1987. Public
comment can be submitted by March 15, 1988.

Comments to July 15, 1987 version of claim
examination rules were received by the
Supreme Court from the Confederated Salish
and Kootenai Tribes; Dept. of Fish,
Wildlife & Parks; Dept. of Natural
Resources & Conservation; Montana Power
Co.; United States of America; Washington
Water & Power; and the Montana Water Court.

No action has yet been taken on comments.
25. August 19, 1987 Water Court orders the DNRC to report any
substantial differences between the claim
examination procedures and the verification
manual for Basins 43A, 41G, 40K, 40C and 41C.
26. Fall, 1987 Water Right Claim Examination Manual drafted
to provide step-by-step procedures for DNRC
staff to follow in implementing the Supreme
Court rules on a day-to-day basis.
27. Sept. 4, 1987 Report for the five basins (43A, 41G, 40K,
40C and 41C) mentioned in the August 19, 1987
order, are submitted to the Water Court.
28. Oct. 14, 1987 Legislature's Water Policy Committee hires
Denver law firm as consultants to study the
adjudication and submit a report.
29. Oct. 19, 1987 Water Court issues order denying re-
examination of Basin 40C.
30. December, 1987 Claim examination begun in six basins using
the Water Rights Claims Examination Rules.
31. Dec. 11, 1987 Water Court issues order denying re-
examination of Basin 41G.

32. Dec. 17, 1987 Water Court issues order denying re-examination of Basin 40K.
33. January 4, 1988 US Government files a Motion before the Water Court to have re-examination comparison reports prepared on all basins in Temporary Preliminary and Preliminary Decree, and that re-examination be conducted in those basins on which comparison reports had been written, i.e., 40C, 40K, 41C, 41G, and 43A.
34. May 10, 1988 Water Court issues Order and Memorandum denying the US Government Motion for re-examination and takes Motion for comparison reports under advisement.
35. August 3, 1988 Temporary Preliminary Decree issued for Shields River basin (43A).
First post-stipulation decree.
36. Sept. 30, 1988 Consultant's report submitted to Water Policy Committee.
Affirms Montana's adjudication. Suggests legislative "fine-tuning".
37. May 10, 1989 Water Court and DNRC jointly submit proposed revisions to the rules to the state Supreme Court aimed at increasing pace of examination.
38. Spring, 1989 1989 Legislature increases adjudication program budget by \$150,000 per year for FY90 and FY91. Staff increased from 20 FTE to 27 FTE (20 FTE in regional offices).
39. July 13, 1989 Supreme Court issues first Order amending the claim examination rules, with an effective date of September 1, 1989.
40. July 17, 1989 Water Court rules that any claims for existing pre-1973 water rights not filed on or before the April 30, 1982 deadline are forfeited.
41. Sept. 1, 1989 Dept. of Fish, Wildlife and Parks only party to submit comments and objections to the September 1, 1989 version of the claim examination rules. DFWP's comments were overruled by the Supreme Court on November 2, 1989.
42. March 29, 1990 Judge W. W. Lessley dies after serving close to eleven years as the first Chief Water Judge of the Montana Water Court.

43. May, 14, 1990 C. Bruce Loble is appointed Chief Water Judge by the Montana Supreme Court.
44. Dec. 18, 1990 Supreme Court issues second Order amending the claim examination rules, with an effective date of January 15, 1991.
45. May 6, 1992 Montana Supreme Court affirms the July 17, 1989 decision by the Water Court that claims filed after the April 30, 1982 deadline are forfeited.
46. July 1, 1993 Senate Bill 310 becomes effective. The bill provides for the conditional remission of the forfeiture of existing right caused by the failure to comply with the April 30, 1982 deadline. Water right claimants are given one more opportunity to file a water right claim in the general adjudication. The deadline for filing claims is July 1, 1996.
47. July 1, 1993 1993 Legislature reduced adjudication staff from 27 to 23 FTE. (Regional office staff reduced from 20 to 17 FTE and the Helena central office staff decreased from 7 to 6 FTE.)
48. Nov. 1993 Special Legislative session reduced adjudication budget and eliminated four regional office FTE (13 FTE in regional offices). Total program staff reduced from 23 to 19 FTE.
49. Feb. 8 1995 Water Court rules they have the right to call claims [ON MOTION OF THE WATER COURT].
50. April 13 1995 1995 Legislature forms an advisory committee. The chief water judge shall appoint the committee to provide recommendations on methods to improve and expedite the water adjudication process.